



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Associated Professional Enterprises, Inc.--
Request for Reconsideration

File: B-235066.2

Date: May 18, 1989

DIGEST

Request for reconsideration of protest that was dismissed as untimely is denied where protester fails to show good cause for untimeliness and protest does not present a significant issue of widespread interest or importance to the procurement community.

DECISION

Associated Professional Enterprises, Inc., requests reconsideration of our dismissal as untimely of its protest under request for proposals (RFP) No. DLA137-89-R-5237 (RFP No. 5237), issued as a small disadvantaged business set-aside by the Defense Logistics Agency (DLA) for milk and dairy products for commissary resale at the Naval Station, Adak, Alaska.

We deny the request for reconsideration.

In the protest, Associated objected to DLA's failure to award a contract under RFP No. 5237 to its firm. Associated also alleged that Carnation Company was continuing to perform a contract that was awarded under RFP No. DLA-137-88-R-3398 (RFP No. 3398), an earlier solicitation for milk and dairy products for commissary resale and troop issue, which DLA allegedly canceled as a result of Associated's protest that the solicitation's evaluation scheme was defective. See Associated Professional Enterprises, Inc., B-231766, Oct. 12, 1988, 88-2 CPD ¶ 343. Associated's earlier protest was dismissed as academic by our Office because DLA stated that it would take corrective action by canceling RFP No. 3398, terminating the Carnation contract, and resoliciting the requirement. Id.

The requirement under the canceled RFP No. 3398 was resolicited under two separate solicitations. The contract under the resolicitation for milk and dairy products for

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troop issue was awarded to Associated. RFP No. 5237, the resolicitation for commissary resale, was canceled on March 9, 1989, after offers had been received, because DLA determined that the proposed prices were in excess of a fair and reasonable price per gallon of milk and did not reflect the lowest overall cost available to the government.

Under our Bid Protest Regulations, if a protest has been filed initially with the contracting agency, any subsequent protest to our Office must be filed within 10 days of formal notification of or actual or constructive knowledge of initial adverse agency action. 4 C.F.R. § 21.2(a)(3) (1988). Here, the protester learned of DLA's denial of its agency protest on March 20. Since Associated filed its protest with our Office on April 4, 1 day after April 3, the 10 working day deadline, we dismissed the firm's protest as untimely.

Under our Bid Protest Regulations, an untimely protest may be considered either for good cause shown or where our Office determines that the protest raises issues significant to the procurement system. 4 C.F.R. § 21.2(b). In its reconsideration request, Associated argues that its protest should be considered because it made a "good faith effort" to comply with our timeliness requirements by mailing the protest 6 calendar days before the 10-day deadline. Associated apparently is arguing that because of the effort it made to meet the 10-day deadline, its protest falls within the "good cause" exception to our timeliness rules.

That exception, however, is limited to circumstances where some compelling reason beyond the protester's control prevents the filing of a timely protest. EG&G Washington Analytical Services Center, Inc., B-231168, May 24, 1988, 88-1 CPD ¶ 494. Associated has not alleged or shown such a compelling reason here; it merely asserts that it mailed the protest in what it regarded as ample time to reach our Office within the 10-day period.

Alternatively, Associated argues that its protest should be considered because the issues raised--whether DLA misled our Office into dismissing Associated's prior protest, and whether DLA, in denying Associated the contract under RFP No. 5237, is taking punitive action against the protester for forcing DLA to concede that the prior solicitation was defective--are significant to the procurement system.

We will consider an untimely protest under the "significant issue" exception to our timeliness rules where the protest raises issues of first impression that would have widespread

significance to the procurement community. CardioMetrix--
Reconsideration, B-231361.2, June 7, 1988, 88-1 CPD ¶ 541.
Associated's protest does not satisfy this standard. Other
than inferences and speculation as to the agency's motiva-
tion, Associated offers no support for its contention that
the agency acted in bad faith. On the contrary, the record
shows that DLA decided not to award a contract to Associated
under RFP No. 5237 and instead to cancel and resolicit
because the bid prices received were unreasonably high, and
DLA decided it was in the government's best interest to
revise the delivery requirements in the RFP in a manner
designed to reduce both product and transportation costs.

The request for reconsideration is denied.



James F. Hinchman
General Counsel